

## 37 Am. Jur. 2d Fraud and Deceit § 191

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### Fraud and Deceit

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### IV. False Representations

#### G. Representations and Statements as to Particular Matters

#### 4. Credit, Solvency, and Financial Standing

### § 191. Representations as to credit or financial condition of firm, corporation, or association—Respecting transactions in corporation's securities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

#### Forms

[Am. Jur. Pleading and Practice Forms, Corporations § 133](#) (Complaint, petition, or declaration—For damages—Misrepresentations in prospectus—Promoter's guaranty of minimum annual dividend on stock subscription)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 135 to 138](#) (Complaint in federal court—For damages—Purchase of stock induced by misrepresentation)

It is frequently held that representations as to the value and desirability of corporate securities, such as stocks and bonds, made to induce a commercial transaction therein, are actionable fraud where false, and where definite statements and particular facts as to the financial condition, assets, and status of the corporation have been asserted,<sup>1</sup> especially where the parties have not had equal knowledge or means of knowledge of the subject.<sup>2</sup> A mere expression of opinion, however, as to the worth of a corporation or the value of its securities, or, what they will be worth in the future, in the absence of any particular statements or special circumstances affecting the relationship of the parties, will not be regarded as actionable.<sup>3</sup>

Misrepresentations as to the financial condition of a corporation contained in reports of directors,<sup>4</sup> or of a proposed corporation contained in a prospectus,<sup>5</sup> may constitute fraud where one is induced to purchase stock in reliance thereon, the same as false

representations by officers of a bank that induce the making of deposits therein<sup>6</sup> provided that they are statements of facts and not mere expressions of opinion.<sup>7</sup>

The rule that a misstatement of particular facts affecting the financial worth of a corporation and the attendant value of its securities is actionable has been applied many times to various false representations, and thus, false representations that a corporation has a certain capital or a particular financial standing,<sup>8</sup> or that a mining company has in its treasury a large sum of money available for the development of a mine or has ore of a certain value in sight,<sup>9</sup> made by one seeking to dispose of stock, will sustain an action of deceit where the other elements of actionable fraud are present. False representations that a corporation has been properly incorporated, and as to the condition of its business and the value of its stock, have been held to be ground for rescission of a transaction involving such stock.<sup>10</sup> It has also been suggested that fraud might be predicated upon deliberately false statements as to the future listing of stock on an exchange, or the future commencement of operations by a corporation the stock of which was sold.<sup>11</sup>

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#### Footnotes

- 1 Blasdel v. Mullenix, 356 F. Supp. 924 (W.D. Okla. 1971); Laney-Payne Farm Loan Co. v. Greenhaw, 177 Ark. 589, 9 S.W.2d 19, 73 A.L.R. 1117 (1928); Trust Co. of Norfolk v. Fletcher, 152 Va. 868, 148 S.E. 785, 73 A.L.R. 1111 (1929).
- 2 Kirby v. Davis, 91 S.W.2d 215 (Mo. Ct. App. 1936); Trust Co. of Norfolk v. Fletcher, 152 Va. 868, 148 S.E. 785, 73 A.L.R. 1111 (1929).
- 3 Deming v. Darling, 148 Mass. 504, 20 N.E. 107 (1889).
- 4 Am. Jur. 2d, Corporations §§ 1636, 1637.
- 5 Am. Jur. 2d, Corporations §§ 522, 523.
- 6 Am. Jur. 2d, Banks and Financial Institutions § 406.
- 7 Bushey v. Coffman, 103 Kan. 209, 173 P. 341 (1918); Redfield v. Lamb, 103 Neb. 410, 172 N.W. 48 (1919).
- 8 Kirby v. Davis, 91 S.W.2d 215 (Mo. Ct. App. 1936).
- 9 Barndt v. Frederick, 78 Wis. 1, 47 N.W. 6 (1890).
- 10 Wagner v. Fehr, 211 Pa. 435, 60 A. 1043 (1905).
- 11 Edward Brockhaus & Co. v. Gilson, 263 Ky. 509, 92 S.W.2d 830 (1936).

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